

AAdministrative
Services
Letter

05-06

**Complaints of Improper
Interference/Retaliation**



Personnel ASLs

Signed By	/s/ Marie LaVergne, Chief Administrative Services Division	Number	05-06
Distribution	All Employees	Date Issued	June 3, 2005
Subject	Complaints of Improper Interference/Retaliation	Expires	When Canceled
Guide Section	Personnel	Reference	Cancels ASL 87-01

Although this Administrative Services Letter (ASL) is being reissued, there are no changes to the prior ASL 87-01.

The California Air Resources Board (ARB) is committed to protecting employees and applicants for employment from interference with making a protected disclosure or retaliation for having made a protected disclosure or for having refused an illegal order as defined in this policy. This policy is derived from the [California Whistleblower Protection Act \(Government Code Sections 8547 – 8547.12\)](#). Under the California Whistleblower Protection Act a State employee may not:

- (1) retaliate against an employee or applicant for employment who has made a protected disclosure or who has refused to obey an illegal order, nor
- (2) directly or indirectly use or attempt to use the official authority or influence of his or her position or office for the purpose of interfering with the right of an applicant or an employee to make a protected disclosure.

CALIFORNIA WHISTLEBLOWER HOTLINE

The California State Auditor, Bureau of State Audits administers the California Whistleblower Hotline. The hotline enables state employees and the public to report improper acts committed by state agencies, departments, or employees. An improper governmental activity is any activity by a state agency or by an employee that is undertaken in the performance of the employee's official duties, whether or not that action is within the scope of his/her employment, and that:

- (1) Is in violation of any state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, or
- (2) Is economically wasteful, or involves gross misconduct, incompetence, or inefficiency. For purposes of Sections 8547.4, 8547.5, 8547.10, and 8547.11, "improper governmental activity" includes any activity by the University of California or by an

employee, including an officer or faculty member, who otherwise meets the criteria of this subdivision.

The State Auditor, Bureau of State Audits is responsible for investigating and reporting on improper governmental activities. A complaint of improper governmental activity may be filed by calling the Bureau of State Audits at (800) 952-5665 (TTY: (866) 293-8729) or by writing to:

Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

The Bureau of State Audits does not accept complaints via their web site or e-mail. However, an [electronic complaint form](#) is available and may be submitted to the Bureau of State Audits by mail.

COMPLAINTS OF IMPROPER INTERFERENCE/RETALIATION

State officers and employees are prohibited from using or threatening to use their official authority or influence to intimidate, threaten, coerce, any State employee or applicant for State employment for the purpose of interfering with their right to report alleged acts of improper governmental activity. Employees who believe they have been retaliated against may file a complaint with the Appeals Division of the State Personnel Board.

Definitions:

Protected disclosure - good faith communication that discloses or demonstrates an intention to disclose information that may evidence either (1) an improper governmental activity or (2) any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.

Improper Governmental Activity – any activity that violates a state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform a duty, or involves gross misconduct, incompetence, or inefficiency.

Illegal order - any directive to violate or assist in violating a federal, state, or local law, rule, or regulation or an order to work or cause others to work in conditions outside their line of duty that would unreasonably threaten the health and safety of other employees or the public.

Interference – direct or indirect uses of authority or influences to obstruct the right of an individual to make a protected disclosure.

Use of Official Authority or Influence – includes, but is not limited to, promising to confer, or conferring, any benefit; effecting, or threatening to effect, any reprisal; or taking, or directing others to take, or recommending, processing, or approving, any personnel

action, including, but not limited to, appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action;

PROCEDURES FOR FILING COMPLAINTS OF IMPROPER INTERFERENCE OR RETALIATION

The following provisions are in effect regarding the filing of complaints of improper interference or retaliation:

- 1) An employee who files a complaint of improper interference or retaliation must have previously filed a complaint of improper governmental activity with the Bureau of State Audits.
- 2) Complaints of improper interference or retaliation should be submitted directly to the employee's supervisor with copies provided to the ARB Human Resources Branch. The employee may also, but is not required to, submit the complaint directly to the Appeals Division of the State Personnel Board.
- 3) Complaints must be filed within 12 months of the most recent act of alleged interference or reprisal.
- 4) Complaints must be submitted in writing, signed by the complainant, and notarized if adverse action is sought.
- 5) Complaints must include written verification of the report filed with the Bureau of State Audits; a copy of the report and the Auditor General's response will suffice.
- 6) Complaints must clearly identify the facts that form the basis of the complaint, including, but not limited to:
 - a) the improper governmental activity that the complainant reported, or the illegal order or directive the complainant refused to obey;
 - b) the date the complainant reported the improper governmental activity, or refused to obey the illegal order or directive;
 - c) the person(s) to whom the complainant reported the improper governmental activity, or to whom the complainant stated that he or she would not obey the illegal order or directive;
 - d) the improper personnel action the complainant experienced as a result of reporting the improper governmental activity, or refusing to obey an illegal order or directive;
 - e) the date on which the improper employment action occurred; and,
 - f) all information that the complainant possesses that shows that the improper employment action occurred as a result of complainant's report of improper governmental activity, or refusal to obey the illegal order or directive;
- 7) The complaint should include as attachments:
 - a) include as attachments all non-privileged documents, records, declarations and other information in the complainant's possession, custody, or control that are relevant to the complaint of retaliation;
 - b) include as an attachment a list of all documents or records relevant to the complaint of retaliation that are not in the complaining party's possession, custody, or control, but which he or she reasonably believes to be in the possession, custody, or control of the appointing power or any individually named respondent to the complaint;
 - c) identify all respondents known to the complainant (i.e., the appointing power as well as all state civil service or community college employees alleged to have retaliated against the complainant), and identify the business address of each

- respondent named as a party to the complaint;
- d) include as an attachment any complaints of retaliation previously filed concerning the same retaliatory acts alleged in the complaint, and a copy of the written response of the appointing power to the complaint, if such response has been provided to the complainant. If the appointing power provides a written response to any such previously filed complaint of retaliation to the complainant after the complaint has been filed with the State Personnel Board, Appeals Division, the complainant shall file a copy of any response with the Appeals Division within 5 days of receipt of the written response;
- 8) If adverse action is sought against any specific individual, the complaint must clearly state the facts constituting the cause or causes for adverse action in such detail as is reasonably necessary to enable the accused employee to prepare a defense. If the material facts alleged are not within the personal knowledge of the complainant, the complaining party may be required to present supporting affidavits from persons having actual knowledge of the facts before acting upon the request for adverse action. Any failure to comply with the provisions of this section shall constitute a waiver on the part of the complainant to subsequently seek disciplinary action against the specific individual.
- 9) Complaints MUST include a sworn statement, under penalty of perjury, that the contents of the written complaint are true, or believed by the complainant to be true.
- 10) Complaints must be limited to a maximum of 15 pages of double-spaced typed or printed text, not including exhibits. Additional pages may be allowed upon a showing of good cause. The complainant shall submit a separate document with the complaint stating the reasons for good cause.

Within 30 working days of receipt of the complaint, the ARB will complete an investigation and notify the State Personnel Board of the outcome and any action taken.

Information regarding filing procedures and actions taken by the State Personnel Board, Appeals Division for complaints filed directly with the State Personnel Board, Appeals Division can be obtained from the [State Personnel Board \(http://www.spb.ca.gov/chief/regulations.htm\)](http://www.spb.ca.gov/chief/regulations.htm).

Questions regarding information contained in this Administrative Services Letter may be directed to your assigned Personnel Specialist.

Additional information regarding Complaints of Improper Interference/Retaliation may be obtained from the [State Personnel Board \(http://www.spb.ca.gov/chief/regulations.htm\)](http://www.spb.ca.gov/chief/regulations.htm).

References:

- [Whistleblower Complaint Form](#)
- [Sample Whistleblower Retaliation Complaint](#)
- [Frequently Asked Questions](#)

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